

8988/SHV
CICHANOWICZ, CALLAN, KEANE, VENGROW & TEXTOR, LLP
Attorneys for Defendant Port Air Cargo International Corp.
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEMNITY INSURANCE COMPANY OF
NORTH AMERICA, a/s/o Harris Corporation

Plaintiff,

- against -

PORT AIR CARGO INTERNATIONAL CORP.;
ATLAS AIRLINES; ATLAS AIR, INC.; SKS
LOGISTICS;

Defendant.

ATLAS AIRLINES AND ATLAS AIR INC.

Third-Party Plaintiffs,

-against-

C.A.L. CARGO AIRLINE

Third-Party Defendant.

ECF CASE

07 Civ. 5872

**PORT AIR CARGO
INTERNATIONAL'S ANSWER TO
THE COMPLAINT
WITH CROSS CLAIMS**

Defendant Port Air Cargo International Corp. through its attorneys Cichanowicz, Callan, Keane, Vengrow & Textor LLP answers the complaint with civil number 07 Civ. 5872 as follows:

1. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 1 of plaintiff's complaint.

2. As for defendant Port Air Cargo International admits to be corporation but denies all other allegations contained in paragraph 2 of plaintiff's complaint and is not required to respond to the allegations directed at any other party; to the extent that any of the allegations are somehow constructed to contain any allegation on assertion of liability directed at Port Air Cargo International Corp., said allegations or assertion is specifically denies.

3. Denies each and every allegation contained in paragraph 3 of plaintiff's complaint.

IN RESPONSE TO THE FIRST CAUSE OF ACTION

4. Repeats and realleges each and every admission, denial and denial of knowledge or information contained in paragraph 1 through 3 inclusive of this answer, with the same force and effect as if herein set forth at length.

5. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 5 of plaintiff's complaint.

6. Admits each and every allegation contained in paragraph 6 of plaintiff's complaint.

7. Admits, this action involves a shipment of communications equipment and shelters which moved from New York to Algeria and except where so admitted denies each and every allegation contained in paragraph 7 of plaintiff's complaint.

8. Denies each and every allegation contained in paragraph 8 of plaintiff's complaint.

9. Denies each and every allegation contained in paragraph 9 of plaintiff's complaint.

10. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 10 of plaintiff's complaint.

IN RESPONSE TO THE SECOND CAUSE OF ACTION

11. Repeats and realleges each and every admission, denial and denial of knowledge or information contained in paragraphs 1 through 10 inclusive of this answer, with the same force and effect as if herein set forth at length.

12. Denies each and every allegation contained in paragraph 12 of plaintiff's complaint and is not required to respond to the allegations directed at any other party; to the extent that any of the allegations are somehow constructed to contain any allegations or assertion of liability direct of Port Air Cargo International, said allegations or assertion is specifically denied.

13. Denies each and every allegation contained in paragraph 13 of plaintiff's complaint and is not required to respond to the allegations directed at any other party; to the extent that any of the allegations are somehow constructed to contain any allegations or assertion of liability direct of Port Air Cargo International, said allegations or assertion is specifically denied.

FIRST AFFIRMATIVE DEFENSE

14. Plaintiff's complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

15. The damages allegedly sustained by plaintiff were caused or contributed to by plaintiff's own negligence or culpable conduct and Port Air Cargo International is, therefore, not liable to plaintiff and/or any other party to this lawsuit.

THIRD AFFIRMATIVE DEFENSE

16. Plaintiff is barred from any recovery from Port Air Cargo International because it failed to give timely notification of a claim or a complaint in writing pursuant to the terms and conditions of the airway bill.

FOURTH AFFIRMATIVE DEFENSE

17. The damages allegedly sustained by plaintiff were cause by the direct and proximate negligence or intentional conduct of other parties, their agents or employees, or by others unknown at this time whom Port Air Cargo International had no control at any time relevant hereto, and in the event Port Air Cargo International is found liable, which liability is expressly denied, Port Air Cargo International will be entitles to indemnification, contribution or apportionment of liability pursuant to applicable law.

FIFTH AFFIRMATIVE DEFENSE

18. The damages allegedly sustained by plaintiff were not proximately cause by any negligence or culpable conduct on the part of Port Air Cargo International.

SIXTH AFFIRMATIVE DEFENSE

19. That the plaintiff could, with dues diligence, have obtained personal jurisdiction over tortfeasors not a party to this lawsuit and thus the culpability of these missing or absent tortfeasors may be computed into the apportionment of total culpability causing the subject occurrence.

SEVENTH AFFIRMATIVE DEFENSE

20. Plaintiff failed, refused or neglected to take reasonable steps to mitigate its damages, if any, thus barring or diminishing his recover herein.

EIGHTH AFFIRMATIVE DEFENSE

21. That, if an in the event plaintiff was damaged as alleged in the complaint, plaintiff's recovery is subject to the conditions of contract of the air waybill.

NINTH AFFIRMATIVE DEFENSE

22. Port Air Cargo International reserves the right to raise additional affirmative defenses based upon the facts developed through discovery.

CROSS-CLAIM

**AS AND FOR THEIR CROSS-CLAIM AGAINST DEFENDANT ATLAS AIRLINES,
ATLAS AIR INC., SKS LOGISTICS AND THIRD-PARTY DEFENDANT C.A.L. CARGO
AIRLINE DEFENDANT PORT AIR CARGO INTERNATIONAL
ALLEGES AS FOLLOWS:**

23. Repeats and realleges each and every admission, denial and denial of knowledge or information contained in paragraph 1 through 22 inclusive of this answer, with the same force and effect as if herein set forth at length.

24. If there was any loss or damage to the shipment referred to in the complaint, which is denied, and said loss or damage cause any liability to defendant Port Air Cargo International, then the said liability was brought about the negligence and/or breach of contract, breach of warranties, implied or express by defendants Atlas Airlines, Atlas Air Inc., SKS Logistics and Third-Party Defendant C.A.L. Cargo Airline and by reason thereof, defendant Port Air Cargo International is entitled to full indemnity and/or contribution from defendant Atlas Airlines, Atlas Air Inc., SKS Logistics and Third-Party Defendant C.A.L. Cargo Airline, for its loss and damage including reasonable counsel fees and expenses.

WHEREFORE, defendant Port Air Cargo International prays that the complaint against it be dismissed and its cross-claim be granted, and that the Court may grant such other or further relief as may be just and proper.

Dated: New York, New York
September 11, 2007

Respectfully submitted,

CICHANOWICZ, CALLAN, KEANE,
VENGROW & TEXTOR, LLP
Attorneys for Defendant Port Air Cargo
International Corp.

By: /s/ Stephen H. Vengrow
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CERTIFICATE OF SERVICE BY ECF AND BY REGULAR U.S. MAIL

The undersigned declares under penalty of perjury that the following is true and correct:

1. I am over the age of eighteen years and I am not a party to this action.
2. On September 11, 2007, I served a complete copy of Defendant Port Air Cargo International Corp's **Answer to the Complaint with Cross-claims** by ECF to the following attorneys at their ECF registered address and by regular U.S. mail at the following addresses:

To: David Mazaroli, Esq.
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/ s / Patrick Michael DeCharles, II
Patrick Michael DeCharles, II (PMD/9984)

DATED: September 11, 2007
New York, New York